

Approved June 14, 2013.

Effective June 14, 2013.

CHAPTER 810

S.B. No. 1759

AN ACT

relating to the procedures for the appointment of and the duties of attorneys ad litem in certain suits affecting the parent-child relationship.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 107.004, Family Code, is amended by amending Subsections (b) and (c) and adding Subsection (b-1) to read as follows:

(b) An attorney ad litem appointed for a child in a proceeding under *Subtitle E* [~~Chapter 262 or 263~~] shall complete at least three hours of continuing legal education relating to *representing children in child protection cases* [~~advocacy~~] as described by Subsection (c) as soon as practicable after the attorney ad litem is appointed [~~litem's appointment~~]. An attorney ad litem is not required to comply with this subsection if the court finds that the attorney ad litem has experience equivalent to the required education.

(b-1) *An attorney who is on the list maintained by the court as being qualified for appointment as an attorney ad litem for a child in a child protection case must complete at least three hours of continuing legal education relating to the representation of a child in a proceeding under Subtitle E each year before the anniversary date of the attorney's listing.*

(c) The continuing legal education required by Subsections [~~Subsection~~] (b) and (b-1) must:

(1) be low-cost and available to persons throughout this state, including on the Internet provided through the State Bar of Texas; and

(2) focus on the duties of an attorney ad litem in, and the procedures of and best practices for, *representing a child in a proceeding under Subtitle E* [~~Chapter 262 or 263~~].

SECTION 2. Subsection (a), Section 107.013, Family Code, is amended to read as follows:

(a) In a suit filed by a governmental entity *under Subtitle E* in which termination of the parent-child relationship *or the appointment of a conservator for a child* is requested, the court shall appoint an attorney ad litem to represent the interests of:

(1) an indigent parent of the child who responds in opposition to the termination *or appointment*;

(2) a parent served by citation by publication;

(3) an alleged father who failed to register with the registry under Chapter 160 and whose identity or location is unknown; and

(4) an alleged father who registered with the paternity registry under Chapter 160, but the petitioner's attempt to personally serve citation at the address provided to the registry and at any other address for the alleged father known by the petitioner has been unsuccessful.

SECTION 3. Section 107.0131, Family Code, is amended to read as follows:

Sec. 107.0131. POWERS AND DUTIES OF ATTORNEY AD LITEM FOR PARENT.

(a) An attorney ad litem appointed under Section 107.013 to represent the interests of a parent:

(1) shall:

(A) subject to Rules 4.02, 4.03, and 4.04, Texas Disciplinary Rules of Professional Conduct, and within a reasonable time after the appointment, interview:

(i) the parent, unless the parent's location is unknown;

(ii) each person who has significant knowledge of the case; and

- (iii) the parties to the suit;
- (B) investigate the facts of the case;
- (C) to ensure competent representation at hearings, mediations, pretrial matters, and the trial on the merits:
 - (i) obtain and review copies of all court files in the suit during the attorney ad litem's course of representation; and
 - (ii) when necessary, conduct formal discovery under the Texas Rules of Civil Procedure or the discovery control plan;
- (D) take any action consistent with the parent's interests that the attorney ad litem considers necessary to expedite the proceedings;
- (E) encourage settlement and the use of alternative forms of dispute resolution;
- (F) review and sign, or decline to sign, a proposed or agreed order affecting the parent;
- (G) meet before each court hearing with the parent, unless the court:
 - (i) finds at that hearing that the attorney ad litem has shown good cause why the attorney ad litem's compliance is not feasible; or
 - (ii) on a showing of good cause, authorizes the attorney ad litem to comply by conferring with the parent, as appropriate, by telephone or video conference;
- (H) *abide by the parent's objectives for representation*;
- (I) become familiar with the American Bar Association's standards of practice for attorneys who represent parents in abuse and neglect cases; *and*
- (J) ~~[(4)]~~ complete at least three hours of continuing legal education relating to *representing parents in child protection cases* [law] as described by Subsection (b) as soon as practicable after the attorney ad litem is appointed, unless the court finds that the attorney ad litem has experience equivalent to that education; and
- ~~[(J) abide by the parent's objectives of representation;]~~
- ~~(2) [must be trained in child protection law or have experience determined by the court to be equivalent to that training; and~~
- ~~[(3)]~~ is entitled to:
 - (A) request clarification from the court if the role of the attorney ad litem is ambiguous;
 - (B) request a hearing or trial on the merits;
 - (C) consent or refuse to consent to an interview of the parent by another attorney;
 - (D) receive a copy of each pleading or other paper filed with the court;
 - (E) receive notice of each hearing in the suit;
 - (F) participate in any case staffing conducted by the Department of Family and Protective Services in which the parent is invited to participate, including, as appropriate, a case staffing to develop a family plan of service, a family group conference, a permanency conference, a mediation, a case staffing to plan for the discharge and return of the child to the parent, and any other case staffing that the department determines would be appropriate for the parent to attend, but excluding any internal department staffing or staffing between the department and the department's legal representative; and
 - (G) attend all legal proceedings in the suit.
- (b) The continuing legal education required by Subsection (a)(1)(J) ~~[(a)(1)(I)]~~ must:
 - (1) be low-cost and available to persons throughout this state, including on the Internet provided through the State Bar of Texas; and
 - (2) focus on the duties of an attorney ad litem in, and the procedures of and best practices for, *representing a parent in a proceeding under Subtitle E* [Chapter 262 or 263].
- (c) *An attorney who is on the list maintained by the court as being qualified for appointment as an attorney ad litem for a parent in a child protection case must complete at*

least three hours of continuing legal education relating to the representation of a parent in a proceeding under Subtitle E each year before the anniversary date of the attorney's listing.

SECTION 4. Subsections (a) and (d), Section 107.0132, Family Code, are amended to read as follows:

(a) *Except as provided by Subsections (b) and (d), an [An] attorney ad litem appointed under Section 107.013 to represent the interests of an alleged father is only required to [shall]:*

(1) conduct an investigation regarding the petitioner's due diligence in locating the alleged father, including by verifying that the petitioner has obtained a certificate of the results of a search of the paternity registry under Chapter 160;

(2) interview any party or other person who has significant knowledge of the case who may have information relating to the identity or location of the alleged father; and

(3) conduct an independent investigation to identify or locate the alleged father, as applicable.

(d) *If the attorney ad litem is unable to identify or locate the alleged father, the attorney ad litem shall submit to the court a written summary of the attorney ad litem's efforts to identify or locate the alleged father with a statement that the attorney ad litem was unable to identify or locate the alleged father. On receipt of the summary required by this subsection, the court shall discharge the attorney from the appointment.*

SECTION 5. Part 1, Subchapter B, Chapter 107, Family Code, is amended by adding Section 107.014 to read as follows:

Sec. 107.014. POWERS AND DUTIES OF ATTORNEY AD LITEM FOR CERTAIN PARENTS. (a) Except as provided by Subsections (b) and (e), an attorney ad litem appointed under Section 107.013 to represent the interests of a parent whose identity or location is unknown or who has been served by citation by publication is only required to:

(1) *conduct an investigation regarding the petitioner's due diligence in locating the parent;*

(2) *interview any party or other person who has significant knowledge of the case who may have information relating to the identity or location of the parent; and*

(3) *conduct an independent investigation to identify or locate the parent, as applicable.*

(b) *If the attorney ad litem identifies and locates the parent, the attorney ad litem shall:*

(1) *provide to each party and the court the parent's name and address and any other available locating information unless the court finds that:*

(A) *disclosure of a parent's address is likely to cause that parent harassment, serious harm, or injury; or*

(B) *the parent has been a victim of family violence; and*

(2) *if appropriate, assist the parent in making a claim of indigence for the appointment of an attorney.*

(c) *If the court makes a finding described by Subsection (b)(1)(A) or (B), the court may:*

(1) *order that the information not be disclosed; or*

(2) *render any other order the court considers necessary.*

(d) *If the court determines the parent is indigent, the court may appoint the attorney ad litem to continue to represent the parent under Section 107.013(a)(1).*

(e) *If the attorney ad litem is unable to identify or locate the parent, the attorney ad litem shall submit to the court a written summary of the attorney ad litem's efforts to identify or locate the parent with a statement that the attorney ad litem was unable to identify or locate the parent. On receipt of the summary required by this subsection, the court shall discharge the attorney from the appointment.*

SECTION 6. Subsection (d), Section 262.1015, Family Code, is amended to read as follows:

(d) A temporary restraining order under this section expires not later than the 14th day after the date the order was rendered, *unless the court grants an extension under Section 262.201(a-3).*

SECTION 7. Section 262.102, Family Code, is amended by adding Subsection (d) to read as follows:

(d) *The temporary restraining order or attachment of a child rendered by the court must contain the following statement prominently displayed in boldface type, capital letters, or underlined:*

"YOU HAVE THE RIGHT TO BE REPRESENTED BY AN ATTORNEY. IF YOU ARE INDIGENT AND UNABLE TO AFFORD AN ATTORNEY, YOU HAVE THE RIGHT TO REQUEST THE APPOINTMENT OF AN ATTORNEY BY CONTACTING THE COURT AT [ADDRESS], [TELEPHONE NUMBER]. IF YOU APPEAR IN OPPOSITION TO THE SUIT, CLAIM INDIGENCE, AND REQUEST THE APPOINTMENT OF AN ATTORNEY, THE COURT WILL REQUIRE YOU TO SIGN AN AFFIDAVIT OF INDIGENCE AND THE COURT MAY HEAR EVIDENCE TO DETERMINE IF YOU ARE INDIGENT. IF THE COURT DETERMINES YOU ARE INDIGENT AND ELIGIBLE FOR APPOINTMENT OF AN ATTORNEY, THE COURT WILL APPOINT AN ATTORNEY TO REPRESENT YOU."

SECTION 8. Section 262.103, Family Code, is amended to read as follows:

Sec. 262.103. DURATION OF TEMPORARY RESTRAINING ORDER AND ATTACHMENT. A temporary restraining order or attachment of the child issued under this chapter expires not later than 14 days after the date it is issued unless it is extended as provided by the Texas Rules of Civil Procedure or Section 262.201(a-3).

SECTION 9. Section 262.201, Family Code, is amended by amending Subsection (a) and adding Subsections (a-1), (a-2), and (a-3) to read as follows:

(a) Unless the child has already been returned to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession and the temporary order, if any, has been dissolved, a full adversary hearing shall be held not later than the 14th day after the date the child was taken into possession by the governmental entity, *unless the court grants an extension under Subsection (a-3).*

(a-1) *Before commencement of the full adversary hearing, the court must inform each parent not represented by an attorney of:*

(1) *the right to be represented by an attorney; and*

(2) *if a parent is indigent and appears in opposition to the suit, the right to a court-appointed attorney.*

(a-2) *If a parent claims indigence and requests the appointment of an attorney before the full adversary hearing, the court shall require the parent to complete and file with the court an affidavit of indigence. The court may hear evidence to determine whether the parent is indigent. If the court determines the parent is indigent, the court shall appoint an attorney to represent the parent.*

(a-3) *The court may, for good cause shown, postpone the full adversary hearing for not more than seven days from the date of the attorney's appointment to provide the attorney time to respond to the petition and prepare for the hearing. The court may shorten or lengthen the extension granted under this subsection if the parent and the appointed attorney agree in writing. If the court postpones the full adversary hearing, the court shall extend a temporary restraining order issued by the court for the protection of the child until the date of the rescheduled full adversary hearing.*

SECTION 10. Subchapter A, Chapter 263, Family Code, is amended by adding Section 263.0061 to read as follows:

Sec. 263.0061. NOTICE TO PARENTS OF RIGHT TO COUNSEL. (a) *At the status hearing under Subchapter C and at each permanency hearing under Subchapter D held after the date the court renders a temporary order appointing the department as temporary managing conservator of a child, the court shall inform each parent not represented by an attorney of:*

(1) the right to be represented by an attorney; and

(2) if a parent is indigent and appears in opposition to the suit, the right to a court-appointed attorney.

(b) If a parent claims indigence and requests the appointment of an attorney in a proceeding described by Subsection (a), the court shall require the parent to complete and file with the court an affidavit of indigence. The court may hear evidence to determine whether the parent is indigent. If the court determines the parent is indigent, the court shall appoint an attorney to represent the parent.

SECTION 11. Subsection (c), Section 107.013, Family Code, is repealed.

SECTION 12. The changes in law made by this Act apply only to a suit affecting the parent-child relationship filed on or after the effective date of this Act. A suit affecting the parent-child relationship filed before that date is governed by the law in effect on the date the suit was filed, and that law is continued in effect for that purpose.

SECTION 13. This Act takes effect September 1, 2013.

Passed the Senate on April 18, 2013: Yeas 30, Nays 0; passed the House on May 20, 2013: Yeas 147, Nays 0, two present not voting.

Approved June 14, 2013.

Effective September 1, 2013.

CHAPTER 811

S.B. No. 1769

AN ACT

relating to the creation of an advisory committee to examine the fingerprinting practices of juvenile probation departments.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. FINGERPRINTING ADVISORY COMMITTEE. Not later than December 1, 2013, the Texas Juvenile Justice Board shall appoint an advisory committee to develop a plan to end the practice of fingerprinting children referred to a juvenile probation department for delinquent conduct, other than felony conduct. The plan must ensure that public safety and due process rights are protected.

SECTION 2. APPOINTMENTS; PRESIDING OFFICER. (a) In making appointments to the advisory committee, the board shall include members who are interested parties, including:

- (1) chief juvenile probation officers;
- (2) juvenile prosecutors;
- (3) juvenile defense attorneys;
- (4) peace officers;
- (5) representatives of the Department of Family and Protective Services;
- (6) juvenile justice advocates; and
- (7) members of the public.

(b) The board shall designate one of the members as presiding officer of the advisory committee.

SECTION 3. REPORT. Not later than December 1, 2014, the advisory committee shall submit to the board the plan developed under Section 1.

SECTION 4. COMPENSATION. Members of the advisory committee serve without compensation and are not entitled to reimbursement for expenses.

SECTION 5. APPLICATION OF LAWS GOVERNING ADVISORY COMMITTEES. The advisory committee is not subject to Chapter 2110, Government Code.